

July 8, 2019

VIA ECF

The Honorable Lorna G. Schofield
U.S. District Court
Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: Contant, et al. v. Bank of Am. Corp., et al.,
No. 17 Civ. 3139 (LGS) (S.D.N.Y.)

Dear Judge Schofield:

Pursuant to this Court's November 16, 2018 Order (ECF No. 176), the parties write to update the Court on the status of the above-captioned action.

I. Pleadings

A. Plaintiffs' Motion for Reconsideration

On December 20, 2018, defendants Barclays Bank PLC; UBS AG; The Royal Bank of Scotland plc; Credit Suisse Group AG; Société Générale; HSBC Bank plc; MUFG Bank, Ltd.; Standard Chartered Bank; and BNP Paribas Group (collectively, "Foreign Defendants") jointly moved to dismiss plaintiffs' Second Consolidated Class Action Complaint (ECF No. 183) for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), which UBS Group AG joined. (ECF Nos. 197-200.) Plaintiffs filed their opposition (ECF Nos. 219-220) and supplemental letter (ECF No. 221) on January 28 and 31, 2019, respectively. Counsel for defendant Credit Suisse Group AG contacted plaintiffs' counsel on February 15, 2019 to discuss voluntary dismissal of Credit Suisse Group AG. Foreign Defendants filed their reply on February 19, 2019. (ECF No. 228.) On that same day, plaintiffs voluntarily dismissed without prejudice Credit Suisse Group AG from the action. (ECF No. 226.) On May 17, 2019, this Court granted the Foreign Defendants' motion to dismiss as to MUFG Bank, Ltd., The Royal Bank of Scotland plc, Société Générale, and UBS Group AG, but denied the motion as to the remaining Foreign Defendants. (*See* ECF No. 263.)

On May 31, 2019, plaintiffs filed a motion for reconsideration of this Court's May 17, 2019 Order granting dismissal as to The Royal Bank of Scotland plc and Société Générale. (*See* ECF Nos. 276-77.) On June 24, 2019, The Royal Bank of Scotland plc and Société Générale filed their opposition (ECF No. 285). On July 8, 2019, the Court denied Plaintiffs' motion for reconsideration. (*See* ECF No. 288.) In light of the Court's decision, the Plaintiffs have informed The Royal Bank of Scotland plc and Société Générale that

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they intend to move for leave to amend the operative complaint and The Royal Bank of Scotland plc and Société Générale have informed Plaintiffs that they intend to oppose any such motion, including in light of Plaintiffs' prior pleadings and the Court's decisions regarding them.

B. Plaintiffs' Motion for Preliminary Approval of Citigroup and MUFG Settlements

On May 29, 2019, plaintiffs filed a motion for preliminary approval of settlements with Citigroup Inc., Citibank, N.A., Citicorp, Citigroup Global Markets Inc. (collectively, "Citigroup") and MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.) ("MUFG"), as well as for certification of the proposed settlement classes for settlement purposes, appointment of settlement class representatives, and appointment of settlement class counsel. (*See* ECF Nos. 272-74.) On May 30, 2019, this Court ordered that any opposition to plaintiffs' preliminary approval motion be filed by July 11, 2019, and scheduled a preliminary approval hearing for July 25, 2019. (*See* ECF No. 275.)

On June 24, 2019, non-settling defendants¹ filed a letter requesting that two clarifying additions be made to plaintiffs' proposed preliminary approval order, clarifying that: (1) any approval of a settlement class is without prejudice to non-settling defendants' ability to challenge certification of a litigation class; and (2) any stay of proceedings as to Citigroup and MUFG does not stay discovery of those parties by non-settling defendants. (*See* ECF No. 284.) Plaintiffs, Citigroup, and MUFG do not object to either of the proposed amendments. (*See id.* at 1.)

C. Defendants' Answers to the Second Consolidated Class Action Complaint

On January 11, 2019, Non-Foreign Defendants filed answers to plaintiffs' Second Consolidated Class Action Complaint. (*See* ECF Nos. 205-216.) The remaining Foreign Defendants not subject to plaintiffs' motion for reconsideration—Standard Chartered Bank, Barclays Bank PLC, BNP Paribas Group, HSBC Bank PLC, and UBS AG—filed their answers on June 3, 2019. (*See* ECF Nos. 279-283.)

¹ In the context of this letter, "defendants" excludes settling defendants Citigroup Inc., Citibank, N.A., Citicorp, Citigroup Global Markets Inc., and MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.).

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II. Discovery

A. Production of Documents

Pursuant to this Court's November 16, 2018 Order (ECF No. 176), Non-Foreign Defendants produced to plaintiffs documents and recordings produced in discovery in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (S.D.N.Y. No. 13-cv-7789) ("*FOREX*"), as well as transactional data for spot FX Instrument transactions with entities identified as retail foreign exchange dealers ("RFEDs") by plaintiffs in November 21, 2018 and December 21, 2018 correspondence. On May 10, 2019, defendants produced *FOREX* plaintiffs' redacted expert reports filed in connection with *FOREX* plaintiffs' motion for class certification. Discovery was stayed as to Foreign Defendants until the Court's ruling on their joint Rule 12(b)(2) motion to dismiss. After this Court's ruling, on June 20, 2019, UBS AG, HSBC Bank plc, Standard Chartered Bank similarly produced to plaintiffs documents and recordings produced in discovery in *FOREX*, as well as transactional data for spot FX Instrument transactions with entities identified as RFEDs by plaintiffs in correspondence dated November 21, 2018 and December 21, 2018.

On March 11, 2019, Non-Foreign Defendants served a first set of requests for production on plaintiffs. On May 1, 2019, plaintiffs served their responses and objections. Defendants first requested that the parties meet and confer on May 17, 2019, and the parties are continuing to meet and confer. On June 5, 2019, defendants first proposed search terms to be applied to plaintiff's electronic document collections. On June 27, 2019, the parties agreed to a form of proposed search terms, subject to revisions based upon the results as applied to plaintiffs' electronic documents. Defendants have requested and plaintiffs have agreed to substantially complete production of plaintiffs' documents other than electronically stored information ("ESI") in response to defendants' first set of requests by July 31, 2019, and to substantially complete production of plaintiffs' ESI documents in response to these requests by August 30, 2019.

B. Initial Disclosures

Plaintiffs and Non-Foreign Defendants exchanged initial disclosures on February 11, 2019. On June 17, 2019, HSBC Bank plc served initial disclosures on plaintiffs, followed by UBS AG and BNP Paribas (SA), both of whom served their initial disclosures on June 27, 2019. Standard Chartered Bank served initial disclosures on July 3, 2019.

C. Interrogatories

On February 11, 2019, defendants BNP Paribas US Wholesale Holdings Corp. and BNP Paribas Securities Corp. served a first interrogatory on plaintiffs, to which plaintiffs served their responses and objections on March 13, 2019. On March 11, 2019, The

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Goldman Sachs Group, Inc. and Goldman Sachs & Co. LLC also served a first set of interrogatories on plaintiffs, as did Deutsche Bank AG and Deutsche Bank Securities Inc., to which plaintiffs served their responses and objections on May 1, 2019. On June 17, 2019, defendants JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. served a first set of interrogatories on plaintiffs. Plaintiffs' responses and objections are due July 17, 2019.

On April 2, 2019, plaintiffs served a first interrogatory on all defendants. On May 2, 2019, responses and objections to this interrogatory were served by BNP Paribas US Wholesale Holdings Corp. and BNP Paribas Securities Corp.; Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated; Barclays Bank PLC and Barclays Capital Inc.; Credit Suisse AG and Credit Suisse Securities (USA) LLC; Deutsche Bank AG and Deutsche Bank Securities Inc.; The Goldman Sachs Group, Inc. and Goldman Sachs & Co. LLC; HSBC North America Holdings, Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc.; JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.; Morgan Stanley, Morgan Stanley & Co., LLC, and Morgan Stanley & Co. International plc; RBC Capital Markets, LLC; RBS Securities Inc.; and UBS Securities LLC.

D. Third Party Discovery

On March 14, 2019, plaintiffs initiated service of subpoenas on sixty-one third parties. On April 11, 2019, FX Direct Dealer, LLC filed a motion to quash the subpoena served upon them by plaintiffs (ECF No. 251), which this Court denied on April 18, 2019 (ECF No. 254). On June 27, 2019, plaintiffs mailed letters to eight RFEDs that failed to respond to plaintiffs' subpoenas by their specified production deadlines. Plaintiffs are currently negotiating the scope and manner of responsive productions with counsel for FX Direct Dealer, LLC and other RFEDs that timely served responses and objections to plaintiffs' subpoenas.

Since April 5, 2019, Non-Foreign Defendants initiated service of subpoenas on fifty-eight third parties and are presently meeting and conferring with thirty of those third parties. Five of those third parties—Advanced Markets LLC; Charles Schwab Futures, Inc.; FX Direct Dealer, LLC; Philip Capital, Inc.; and RJ O'Brien Associates LLC—have made productions to defendants.

To facilitate discovery, the parties have agreed to share documents or data produced in response to a subpoena or request of any kind issued in connection with the action, along with any accompanying cover letter or other transmittal communication, within seven days, to the extent such documents or data were not otherwise served on the other parties by the producing party.

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Pursuant to this Court's May 2, 2019 Order (ECF No. 259), the fact discovery deadline has been extended to February 3, 2020 and the case management conference originally scheduled for May 16, 2019, has been adjourned to January 9, 2020. In light of that Order, pre-motion letters in support of dispositive and class certification motions are due no later than two weeks before the January 9, 2020 case management conference (ECF No. 258).

The parties are not seeking the Court's intervention in any discovery disputes at this juncture.

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